

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHAEL ANDERSON,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY
ADMINISTRATION,

Defendant.

CASE NO. 4:15-CV-5091-EFS

**ORDER DENYING PLAINTIFF'S MOTION
TO ALTER JUDGMENT**

Before the Court, without oral argument, is Plaintiff Michael Anderson's "Rule 59E Motion on This Court's Order Granting In Part Plaintiff's Motion for EAJA Fees." ECF No. 32. On January 13, 2017, the Court granted in part Plaintiff's Motion for EAJA Fees. ECF No. 31. Plaintiff now moves the Court to alter or amend that judgment. He argues that the Court committed clear error by reducing the requested attorney fee award. The Commissioner objects and argues that the Court did not commit any legal or factual error that would justify altering or amending the previous order. ECF No. 33

Three grounds justify altering or amending a judgment under Federal Rule of Civil Procedure 59(e): "(1) the district court is presented with newly discovered evidence, (2) the district court committed clear error or made an initial decision that was manifestly unjust, or (3) there is an intervening change in the controlling law."

1 *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780
2 (9th Cir. 2009). Plaintiff argues that the Court committed clear error
3 because it reduced the fee award despite the presence of a common core
4 of facts, and cites to *Hensley v. Eckerhart*, 461 U.S. 424 (1983), for
5 support.

6 In its previous order, the Court expressly referenced *Hensley*,
7 explaining: "Where a 'plaintiff has failed to prevail on a claim that
8 is distinct in all respects from his successful claims, the hours
9 spent on the unsuccessful claim should be excluded in considering the
10 amount of a reasonable fee.' *Hensley v. Eckerhart*, 461 U.S. 424, 440
11 (1983)." ECF No. 31 at 2. The Court concluded that Claim Two, the
12 claim on which Plaintiff lost, was "largely independent" of the claims
13 on which Plaintiff prevailed. ECF No. 31 at 3. Accordingly, the Court
14 found that it was appropriate under *Hensley* to reduce the requested
15 fees to account for the fact that Plaintiff did not prevail on all of
16 the issues.

17 In reducing the fees, the Court reduced only the reported time
18 spent writing the briefs, and not time spent reviewing the record,
19 doing legal research, writing the fact section, or reading Defendant's
20 filings or Court orders, as the Court recognized that these activities
21 could not be clearly attributed to any of the four claims presented by
22 Plaintiff. The Court finds that this analysis accounted for time spent
23 on research or review that may have been common to the four claims
24 presented. See *Hensley*, 461 U.S. at 435 ("Much of counsel's time will
25 be devoted generally to the litigation as a whole, making it difficult
26 to divide the hours expended on a claim-by-claim basis."); *id.* at 436-

1 37 ("There is no precise rule or formula for making these
2 determinations. The district court may attempt to identify specific
3 hours that should be eliminated, or it may simply reduce the award to
4 account for the limited success. The court necessarily has discretion
5 in making this equitable judgment.").

6 Plaintiff cites to language from *Hensley* indicating that an
7 attorney fee award should be tied to the result, and that a successful
8 result may justify a "fully compensatory fee" even if the plaintiff
9 did not prevail on all alternative grounds for relief. ECF No. 32 at 4
10 (citing *Hensley*, 461 U.S. at 343-35). While this contention is
11 correct, the Court notes that Plaintiff did not obtain a fully
12 successful result in this case. The Court upheld the ALJ's finding on
13 Claim Two and advised that the ALJ did not need to reconsider or
14 reweigh related evidence on remand. ECF No. 25 at 11-12, 21.
15 Accordingly, this claim was not simply an alternative argument for the
16 relief granted by the Court, but was instead a separate argument upon
17 which relief was denied. The time spent on Claim Two was thus not
18 "expended in pursuit of the ultimate result achieved." *Hensley*, 461
19 U.S. at 431.

20 The Court finds that it correctly analyzed the law regarding
21 EAJA fee awards and thus denies Plaintiff's motion to alter or amend
22 the judgment.

23 Accordingly, **IT IS HEREBY ORDERED:**

24 **1.** Plaintiff Michael Anderson's "Rule 59E Motion on This
25 Court's Order Granting In Part Plaintiff's Motion for EAJA
26 Fees," **ECF No. 32**, is **DENIED**.

1 **2.** This file shall remain **CLOSED**.

2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
3 Order and provide copies to all counsel.

4 **DATED** this 1st day of March 2017.

5
6 s/Edward F. Shea

 EDWARD F. SHEA
7 Senior United States District Judge
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